BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Inter-Carrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68
	)	

COMMENTS OF SPRINT CORPORATION

In its Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68 (FCC 99-38, released February 26, 1999), the Commission determined that calls from end users to Internet service providers (ISPs) are jurisdictionally mixed and appear to be largely interstate, but concluded that there are no existing federal rules regarding appropriate compensation for this traffic when two local carriers are involved in handling the call from the consumer to the ISP. Accordingly, the Commission initiated this new rulemaking proceeding to consider what rules should apply, and Sprint hereby submits its comments on the issues raised in the Commission in the NPRM. As discussed below, Sprint believes either the Commission should adopt a rule that whatever compensation arrangements apply to local traffic should also apply to ISP-bound traffic, or the Commission should determine for itself what compensation is appropriate. However, the Commission should not rely on standalone negotiations or attempt to create new jurisdiction in state commissions and federal district courts over rates for interstate traffic.

In the Declaratory Ruling, the Commission held (¶13) that calls from a consumer to an ISP not only consist of the communications path between the consumer and the ISP's local premises, but also include the communications paths to the various Internet

web sites that the consumer accesses during the call. The Commission concluded (¶18) that "although some Internet traffic is intrastate, a substantial portion of Internet traffic involves accessing interstate or foreign web sites" and accordingly is jurisdictionally interstate. The Commission reiterated (¶20) that notwithstanding the jurisdictionally interstate nature of this traffic, ISPs and other ESPs continue to be entitled to purchase their links to the public switched network through intrastate local tariffs, rather than through interstate access tariffs. The Commission noted (¶23) that it "has treated ISP-bound traffic as though it were local" and that LECs have generally characterized expenses and revenues associated with these calls as intrastate for purposes of separations. The Commission further observed (¶25) that this policy of treating ISP-bound traffic as local for purposes of interstate access charges "would, if applied in the separate context of reciprocal compensation, suggest that such compensation is due for that traffic." Nonetheless, the Commission determined (¶22) that it currently has no rule governing intercarrier compensation for ISP-bound traffic. It was in order to fill this void that the Commission instituted this new rulemaking proceeding.

In the NPRM, the Commission tentatively concluded (¶29) that a negotiation process driven by market forces is more likely to lead to an efficient intercarrier arrangement than rates set by regulation and proposed that compensation rates for ISP-bound traffic be based on "commercial negotiations undertaken as a part of the broader interconnection negotiations between incumbent LECs and CLECs." The Commission offered two alternative proposals to govern these negotiations. First, it tentatively concluded (¶30) that intercarrier compensation for this traffic should be governed by interconnection agreements negotiated and arbitrated under §§251 and 252 of the Act, with the full panoply of procedures set forth in §252 (including state arbitration in the event the parties reach an impasse), appeal of state commission arbitrations to federal

district courts, and FCC action in instances where the states fail to act in a timely fashion. Alternatively, the Commission proposed (¶31) the adoption of a set of federal rules governing negotiations, including dispute resolution by the Common Carrier Bureau. In this regard, the Commission sought comment on the costing standards that it should use under this approach, whether interstate and intrastate ISP-bound traffic can be segregated (and in this regard whether federal rules should apply to all intrastate and interstate-bound traffic), and whether the Commission has the authority to establish a binding and non-appealable arbitration process (¶¶31-32). In addition to these two proposals, the Commission invited parties to submit alternative proposals for intercarrier compensation that would advance the Commission's goals of encouraging broad entry of efficient new competitors, eliminating incentives for inefficient entry and irrational pricing schemes, and providing the benefits of competition to consumers (¶33).

Sprint urges the Commission simply to adopt a rule that the ISP-bound calls here in question should be treated as though they were local calls for purposes of intercarrier compensation arrangements. Thus, whatever compensation arrangements apply to purely local calls, be they bill and keep, negotiated reciprocal compensation or state-mandated reciprocal compensation, would apply to these calls as well. Such a policy would be fully consistent with the Commission's determination that interstate access charges should not apply to such calls, that ISPs (and other ESPs) should be able to purchase their interstate access by buying business lines out of local service tariffs, and that both the costs and revenues associated with this traffic should be treated as intrastate for those LECs subject to jurisdictional separations (¶36). Indeed, in view of the fact that the Commission treats ISP-bound calls as if they were local for all these other purposes, it would be anomalous to use a different intercarrier compensation regime for these calls than the one that applies to local calls. In this regard, if intercarrier compensation for

ISP-bound traffic is subject to different rates, terms and charges than purely local traffic, the underpinning for the Commission's desire that ISPs should continue to be able to order their interstate access service using local business-line rates may be weakened. For example, if a LEC receives less revenue for terminating a call to an ISP than to any other local business customer, it may wish to charge ISPs more than the local business rates in order to cover the reasonable costs of providing service to that customer; conversely, if the LEC receives more for terminating traffic to the ISP than the rates applicable to terminating local calls, it may be unjustly enriched by charging the normal business line rates to the ISPs.

Treating ISP-bound calls as local calls for purposes of inter-LEC compensation would also further the Commission's policy goals in this proceeding. Interconnecting LECs must necessarily negotiate or arbitrate the reciprocal compensation rates for jurisdictionally local traffic, and treating ISP-bound traffic as local would avoid imposing separate or additional regulatory hurdles on CLECs that might make entry more difficult, expensive, and time-consuming. Furthermore, having the traffic in question, which tends to be one-way, considered together with other local traffic may avoid the incentives for one party or the other to seek compensation rates that are unduly high or unduly low, depending on which carrier tends to have the largest base of ISP customers. Instead, by combining this traffic with other traffic streams, carriers are likely to adopt more

reasonable negotiating positions.[1] Thus, Sprint believes that efficient entry and rational pricing schemes are most likely to be encouraged if ISP-bound traffic is treated by the Commission for purposes of inter-carrier compensation the same way it is treated by the Commission for all other regulatory purposes – i.e., as if it were purely local traffic.

If the Commission does not adopt Sprint's "treat it as local" proposal, then the Commission should develop a record and prescribe the amount of such compensation directly. Sprint does not believe that either the proposal tentatively adopted by the Commission in ¶30 of the NPRM, nor the alternative proposal set forth in ¶31, are likely to fulfill the Commission's policy goals, because they both rely on the premise that a negotiation process is more likely lead to efficient outcomes than rates set by regulation. In the context of local competition, there is an overwhelming imbalance of market power at the present time. The ILEC is the incumbent dominant carrier and has little, if any, self-interest in encouraging the development of local competition that can only serve to erode its market dominance. It has no need to come to reasonable terms with a CLEC for handling interconnected ISP-bound traffic; if the parties fail to reach an agreement and the carriers do not interconnect for such traffic, then the ISP will necessarily turn to the ILEC for its local service, and the ILEC can keep all the traffic within its own network, instead of having to share the traffic and the revenues with a competitor. Only if and when local competition has developed to the point that ILECs no longer have

[1] Cf. Bell Atlantic's May 30, 1996 Reply Comments in CC Docket No. 96-98, at 21:

> Moreover, the notion that bill and keep is necessary to prevent LECs from demanding too high a rate[for reciprocal compensation] reflects a fundamental misunderstanding of the market. If these rates are set too high, the result will be that new entrants, who are in a much better position to selectively market their services, will sign up customers whose calls are predominantly inbound, such as credit card authorization centers and internet access providers. The LEC would find itself writing large months checks to the new entrant.

significantly greater market power than CLECs would the reliance on intercarrier negotiations be likely to produce an efficient result that comports with the Commission's policy goals. Thus, even if the negotiations were conducted pursuant to Commission-prescribed rules and Commission oversight, as is proposed in ¶31, the likelihood is that the Commission would have to intervene ultimately to determine the reasonable rate to be charged. It would be far more efficient for the Commission to set such rates ab initio rather than subject the parties to the delay and administrative process that would inevitably ensue if negotiations were required in the first instance.

In that regard, Sprint is unaware of any statutory basis for the Commission to establish a binding arbitration process that would not be subject to judicial review. Indeed, the Administrative Dispute Resolution Act (5 U.S.C. §571 et seq.), mentioned by the Commission in ¶32 of the NPRM, allows agencies to use dispute resolution proceedings only if the parties agree to do so. See 5 U.S.C. §572(a). Moreover, even if that were not the case, §572(b) directs agencies to consider not using dispute resolution mechanisms in instances where those processes "would not likely reach consistent results among individual decisions" or the "matter significantly affects entities who are not parties to the proceeding... ." Here there is no guarantee that individually-arbitrated negotiations between an ILEC and each of several CLECs would produce identical rates, and any difference in rates could be commercially harmful to one CLEC, vis-à-vis another CLEC whose arbitrated rate is more favorable.

Sprint also has serious misgivings about the Commission's authority to apply §§ 251 and 252 to the traffic in question, separate and apart from other purely local traffic. It is one thing for the Commission to decide, as a matter of policy, that local reciprocal compensation rates should apply to ISP-bound traffic, just as it has decided that local business rates should apply to the ESPs' purchase of access to the public switched

network. However, it is quite another thing for the Commission to require that intercarrier compensation for ISP-bound traffic be considered separately from reciprocal compensation for local calls, yet be subject to the procedures of §§251 and 252 of the Act. As the Commission held in its Local Competition Order, the reciprocal compensation provisions of §251(b)(5) only apply to local traffic, and not to access for long distance traffic.[2] Although Congress may confer, under appropriate circumstances, jurisdiction on state regulatory commissions, and can expand the jurisdiction of federal district courts to hear appeals from state commission decisions, there is nothing in the Communications Act that vests this Commission with the authority to grant jurisdiction over interstate communications to the states or to expand the jurisdiction of the federal courts. Any effort by the Commission to proceed down that legally infirm path would be harmful to competition, as well as the business interests of ILECs and CLECs alike, since it would simply spawn a new round of litigation and create additional business uncertainty until these issues are ultimately resolved.

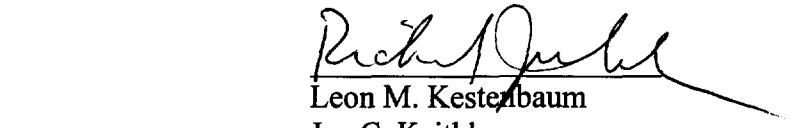
Finally, regardless of how the Commission determines to treat inter-LEC compensation of ISP-bound traffic that is jurisdictionally interstate, neither it nor the states can rationally attempt to adopt different economic arrangements for jurisdictionally interstate and jurisdictionally intrastate ISP-bound traffic; nor, for that matter, could there be different arrangements for ISP-bound calls that are purely local and those that reach web sites, servers and the like that are within the state from which the call originated but outside the local calling area. A single connection from a consumer to an ISP can involve a number of separate queries and responses, some of which may be satisfied entirely within the local calling area, and some of which may involve queries to remote

[2] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 16012-13 (¶¶1033-34) (1996), subsequent history omitted.

data bases in other parts of the state or another state or even another foreign country. There is no way for any LEC to know which portion of any particular ISP-bound call is local, intrastate toll or interstate. Thus, if the Commission believes that the interstate content of calls to ISPs is sufficient to warrant the exercise of interstate jurisdiction at all, the Commission should exercise plenary jurisdiction over such calls. However, for the reasons discussed above, the most responsible way of exercising any such plenary jurisdiction would be to treat the calls as if they were local for purposes of intercarrier compensation.

Respectfully submitted,

SPRINT CORPORATION



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